

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 98-016-S - ORDER NO. 98-334

MAY 8, 1998

IN RE: Midlands Utility, Inc.,)	ORDER
)	DENYING
Complainant/Petitioner,)	MOTION
)	TO DISMISS
vs.)	
)	
Gordon Amick,)	
)	
Respondent.)	
)	
)	
)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Motion to Dismiss filed by the Respondent Gordon Amick ("Amick" of "the Respondent"). By Order dated February 20, 1998, the Commission set the Motion to Dismiss for oral arguments.

Oral arguments on the Motion to Dismiss were held on April 7, 1998. The Honorable Guy Butler, Chairman presided. Respondent Amick was represented by Patrick J. Frawley, Esquire. Midlands Utility, Inc. ("Midlands") was represented by Frank R. Ellerbe, III, Esquire. The Commission Staff was represented by Florence P. Belser, Staff Counsel.

By his Motion to Dismiss, Amick asserts that the Commission lacks jurisdiction over the matter at hand. According to Amick, the subject matter of Midlands' Petition is

a private contract which is beyond the scope and jurisdiction conferred upon the Commission. Amick asserts that he has a valid contract with Midlands supported by valuable consideration and further maintains that the Commission has no jurisdiction or authority to enforce the contract. Amick relies on Martin v. Carolina Water Services, Inc., 273 S.C. 43, 254 S.E.2d 52 (1979) and Linder v. Baker, 280 S.C. 130, 311 S.E.2d 99 (S.C. App. 1984) in support of his position that the Commission lacks jurisdiction over this matter. Additionally, Amick argues that the Commission has no statutory authority to award any affirmative relief to Amick pursuant to any claims or counterclaims which he may have against Midlands with regard to the purported contract. Amick argues that the proper forum for this matter is the Circuit Court, which Amick suggests is the forum in which all the issues concerning this matter, including counterclaims, could be addressed.

In response to the arguments propounded by Amick, Midlands contends that the Commission is the proper forum for this matter to be decided. Midlands maintains that the agreement, which Amick asserts is a contract for free sewer service, is merely an agreement to reserve capacity in the system for future connections from the Amick property. Midlands argues that the issues of the instant matter are within the jurisdiction of the Commission as granted by S.C. Code Ann. Section 58-5-210 (1976) and the regulations of the Commission.

Upon consideration of this matter, the Commission concludes that it does have jurisdiction to hear this matter and denies Amick's Motion to Dismiss. In reaching this

conclusion, the Commission recognizes its jurisdiction as granted by S.C. Code Ann.

§58-5-210 (1976) which provides that:

The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every “public utility” as herein defined.


Under the authority and jurisdiction granted by S.C. Code Ann. §58-5-210 (1976), the Commission has promulgated regulations to govern sewer service by public utilities. See, 26 S.C. Code Regs. 103-500. Under the regulations governing sewer service by a public utility, R. 103-503 was promulgated to control the rates and charges imposed by all sewerage utilities operating in the state. R. 103-503 prohibits a utility from charging rates or charges until such rates are approved by the Commission and also prohibits a utility from charging different rates to customers within a given classification, unless reasonable justification is shown for the different rate and a contract or tariff setting the different rate has been filed and approved by Commission order or directive. See, 26 S.C. Code Regs. 103-503. Furthermore, the Commission has also promulgated R. 103-533 which governs the extent to which a sewerage utility may collect from a customer in the event the sewerage utility has undercharged a customer. Thus the Commission finds that the issues of the instant case are within the scope of the Commission’s regulations, and the Commission concludes that it has jurisdiction over the subject matter on the instant case.

With regard to the cases cited by Amick in support of his Motion to Dismiss, the Commission would note that the factual situations of both of the cases precede the Commission's regulations governing sewerage utilities. Thus the cases are distinguishable from the matter presently before the Commission.

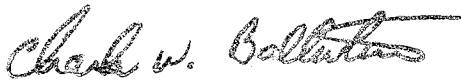
For the foregoing reasons, the Commission denies Amick's Motion to Dismiss.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:



Executive Director

(SEAL)